

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Docket No.: 1:18-cv-11336-FDS

COMMONWEALTH OF MASSACHUSETTS *ex rel.*
MYKEL POWELL, COMMONWEALTH SECOND AMENDMENT, INC.
and BRENT CARLTON; and MYKEL POWELL,

Plaintiffs,

v.

SGT. BRIAN HOLMES, in his Individual and his Official Capacity as
the Deputy Chief of the Stoughton Police Department; JAMES O’CONNOR,
in his individual and official capacity as sergeant of the Stoughton Police
Department; DONNA M. McNAMARA, in her individual and official capacity as Chief
of the Stoughton Police Department; VILLAGE GUN SHOP, INC. d/b/a
VILLAGE VAULT; PETER DOWD; CITY OF SPRINGFIELD;
TOWN OF PLYMOUTH; TOWN OF WINCHESTER; CITY OF CHICOPEE;
TOWN OF DEDHAM; CITY OF MEDFORD; TOWN OF READING;
TOWN OF WAKEFIELD; TOWN OF WILMINGTON; TOWN OF
ANDOVER; TOWN OF FOXBOROUGH; CITY OF GARDNER;
TOWN OF HUDSON and TOWN OF SAUGUS,

Defendants.

**REPLY MEMORANDUM OF LAW OF THE DEFENDANT,
CITY OF CHICOPEE, IN SUPPORT OF ITS MOTION
FOR JUDGMENT ON THE PLEADINGS**

The City of Chicopee, a defendant in this matter (“Chicopee”), hereby incorporates
by reference the legal arguments made by its co-defendants in their *Reply in Support of the
Town Defendants’ Joint Motion to Dismiss*, filed today as Docket No. 106 (“Town
Defendants’ Reply”).

As grounds for this incorporation, Chicopee states as follows:

1. On September 21, 2020, Chicopee moved, pursuant to Fed. R. Civ. P. 12(c), for judgment on the pleadings, dismissing with prejudice Count II of the Third Amended Complaint of the plaintiffs, and the related claims of the plaintiffs against Chicopee.

2. Also on September 21, 2020, the remaining municipal defendants, being the Town of Saugus, the Town of Wilmington, the City of Gardner, the Town of Winchester, the Town of Foxborough, the Town of Andover, the Town of Plymouth, the Town of Reading, the Town of Wakefield, the City of Medford, James O'Connor (in his Individual and Official Capacity as the Chief of the Stoughton Police Department), and Donna McNamara (in her Individual and Official Capacity as the Chief of the Stoughton Police Department) (hereinafter collectively the "Town Defendants"), jointly filed their Motion to Dismiss Count II of Plaintiffs' Third Amended Complaint, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Docket No. 100), with an accompanying Memorandum of Law in support of that Motion (Docket No. 100-1) (hereinafter collectively "the Town Defendants' Motion to Dismiss").

3. The factual circumstances surrounding and legal theories supporting the plaintiffs' claims against Chicopee are identical in material respects to those surrounding and supporting the plaintiffs' claims against the Town Defendants.

4. In consequence, the legal arguments made by the Town Defendants in the Town Defendants' Motion to Dismiss are equally applicable to Chicopee and Chicopee therefore incorporated those arguments in its motion for judgment on the pleadings.

5. For this reason, the legal arguments made by the Town Defendants in their Town Defendants' Reply, which are properly incorporated here, are equally applicable to Chicopee and establish that Chicopee is entitled to judgment on the pleadings.

FOR THESE REASONS, the defendant, City of Chicopee, respectfully requests, pursuant to Fed. R. Civ. P. 12(c), that judgment on the pleadings be entered, dismissing Count II of the Third Amended Complaint of the plaintiffs, and the related claims of the plaintiffs against Chicopee, all with prejudice.

Dated: October 20, 2020

THE DEFENDANT,
CITY OF CHICOPEE,



By: _____
Mark J. Albano, Esq.
Associate City Solicitor
CHICOPEE LAW DEPARTMENT
17 Springfield Street
Chicopee, MA 01013
Tel.: (413) 736-3500
Fax.: (413) 746-9224
B.B.O. No.: 013860
Email: mark@albanolawllc.com

CERTIFICATE OF COMPLIANCE WITH LR 7.1

Pursuant to Local Rule 7.1, the counsel for the other parties have conferred in advance of filing this motion and the parties were unable to resolve this matter. Additionally, leave for this Reply was expressly provided by the Court at the September 9, 2020 conference conducted by the Court. (Dkt. No. 97.)



Mark J. Albano, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2020, this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).



Mark J. Albano, Esq.